

35.7

2013-21089

Cause No. 2008-31419-

JAMIE MILLER

v.

STANDARD FUSEE CORPORATION
d/b/a ORION SAFETY PRODUCTS

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

55 JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff JAMIE MILLER brings this lawsuit complaining of STANDARD FUSEE CORPORATION d/b/a ORION SAFETY PRODUCTS and would respectfully show the following:

I.

DISCOVERY LEVEL

1. Plaintiff requests discovery be conducted under Level 3 in accordance with Rule 190.4 of the Texas Rules of Civil Procedure. This case is not subject to Texas Rule of Civil Procedure 169 because the damages for which Plaintiffs seek exceeds \$100,00.00.

II.

REQUEST FOR DISCLOSURE

2. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Plaintiff requests Defendant to disclose, within fifty (50) days of service of this request, the information and material described in Rule 194.2 of the Texas Rules of Civil Procedure. Plaintiff specifically requests the responding party to produce responsive documents at the undersigned law offices within fifty (50) days of service of this request.

CHRIS DANIEL
DISTRICT CLERK
HARRIS COUNTY, TEXAS

2013 APR -9 PM 4: 58

CIVIL AFTER HOURS

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**III.
PARTIES**

3. Plaintiff JAMIE MILLER is a resident of Houston, Harris County, Texas.
4. Defendant, STANDARD FUSEE CORPORATION, is a foreign corporation organized and existing under the laws of the State of Maryland doing business as Orion Safety Products with its principal office at 28320 Saint Michael's Rd. in Easton, Maryland. Defendant does not maintain a regular place of business or a designated agent for service of process in Texas. Defendant has sufficient contacts with Texas under the Texas Long-Arm Statute, and therefore may be served with process by serving the Texas Secretary of State, 1019 Brazos Street, Austin, Texas 78701.

**IV.
JURISDICTION**

5. The Court has jurisdiction over Defendants because they have either done business in Texas, committed a tort in Texas, and/or have had continuous contacts with Texas. In addition, the damages for which Plaintiff brings suit exceeds the minimal jurisdictional limits of the Court.

**V.
VENUE**

6. Venue is proper in Harris County, Texas because all or a substantial part of the events, actions or omissions giving rise to this claim occurred in Harris County. CIV. PRAC. REM. CODE § 15.002(a)(1).

**VI.
FACTS**

7. Plaintiff Jamie Miller ("Miller) suffered severe, life-altering burns on January 10, 2013 when an Orion flare gun unexpectedly discharged causing third degree burns. The thirty-

seven (37) year old was leaving his house to go fishing when the defective gun unexpectedly fired a 12-gauge flare into his left front pocket. Millers pants, then body, became engulfed in flames as he desperately tried to put out the fire.

8. Miller was taken to Christus St. Johns Hospital for treatment of his third degree burns. However, due to the severity of his burns, Miller was transported by ambulance to Memorial Hermann Hospital, a facility better suited to treat the burns covering more than 9% of Millers total body and 16% of his lower body.

9. Miller was forced to undergo several burn-related surgeries. Due to severe infection caused by the burns, his doctors prepared Miller, physically and mentally, for amputation of his leg. Remarkably, the infection subsided and Miller's leg was saved. Miller spent a total of three weeks in the hospital and six (6) days in the intensive care unit and has incurred tens of thousands of dollars in medical expenses, which will continue into the foreseeable future. The burns caused by the flare gun prevent Miller from working in his chosen trade as a welder.

10. Miller purchased the defective flare gun as a precautionary measure to use as a signal in the event of an emergency while boating and fishing. The potentially deadly flare gun contains no safety or locking mechanism and was designed and manufactured with inadequate hammer and trigger pressure settings. Additionally, the flare gun contained woefully inadequate warnings about the dangers associated with its foreseeable use.

VII. NEGLIGENCE

11. Defendant owed various duties to Plaintiff, a foreseeable user of Defendant's product. Defendant breached these duties and were negligent in one or more of the following ways:

- a. in failing to adequately warn foreseeable users of the inherent risks associated with using its product;
 - b. in failing to use ordinary care in designing a safe product free of inherent dangers;
 - c. in failing to supervise and/or carry out inspections of its product to ensure a safe product was manufactured for foreseeable users;
 - d. in failing to adequately advise foreseeable users on how to properly use its product; and
 - e. in failing to use ordinary care in selling a safe product for the ultimate user.
12. Defendant's acts and omissions proximately caused Plaintiff's injuries.

VIII. PRODUCTS LIABILITY

13. Defendant designed, manufactured and marketed the Orion flare gun which severely burned Plaintiff. This product was defectively designed, manufactured and marketed by Defendant. The defect or defects made this product unreasonably dangerous for its intended use.

14. Specifically, the lack of a safety switch or locking mechanism on the Orion flare gun constitutes an inadequate design. Further, flare gun's unexpected firing constitutes a manufacturing defect while the inadequate warnings associated with the product constitute a marketing defect.

15. Such defects existed at the time Defendant manufactured and/or sold the product in question. Such defects were the proximate cause of Plaintiff's injuries and damages. Therefore, Defendant is liable to Plaintiffs under strict products liability.

**IX.
DAMAGES**

16. Plaintiff respectfully requests the following damages to be considered separately and individually for the purpose of determining the sum of money that will fairly and reasonably compensate him:

- a. The physical pain and suffering Plaintiff has suffered in the past and will continue to suffer in the future;
- b. The physical disfigurement Plaintiff has suffered in the past and will continue to suffer in the future;
- c. The physical impairment Plaintiff has suffered in the past and will continue to suffer in the future;
- d. The mental anguish Plaintiff has suffered in the past and will continue to suffer in the future;
- e. The loss of opportunity Plaintiff has suffered in the past and will continue to suffer in the future;
- f. The loss of enjoyment of life Plaintiff has suffered in the past and will continue to suffer in the future;
- g. The amount of reasonable medical expenses necessarily incurred in the past, and those that will be reasonably incurred in the future; and
- h. The loss of any earnings sustained by Plaintiff in the past, and the loss or reduction of Plaintiff's earning capacity in the future.

**X.
EXEMPLARY DAMAGES**

17. Defendant's conduct, when viewed from the standpoint of the actors at the time of the occurrence, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. Furthermore, Defendant's conduct illustrates not only an attitude of conscious indifference for the rights, safety and welfare of others, but also shows Defendant's actual and subjective awareness of the dangers of such conduct.

18. Nevertheless, Defendant proceeded with a conscious indifference to the rights, safety or welfare of others, including Plaintiff. Therefore, Defendant is liable for exemplary/punitive damages.

**XI.
CONDITIONS PRECEDENT**

19. All conditions precedent have been performed or have occurred as required by Texas Rule of Civil Procedure 54.

**XII.
JURY DEMAND**

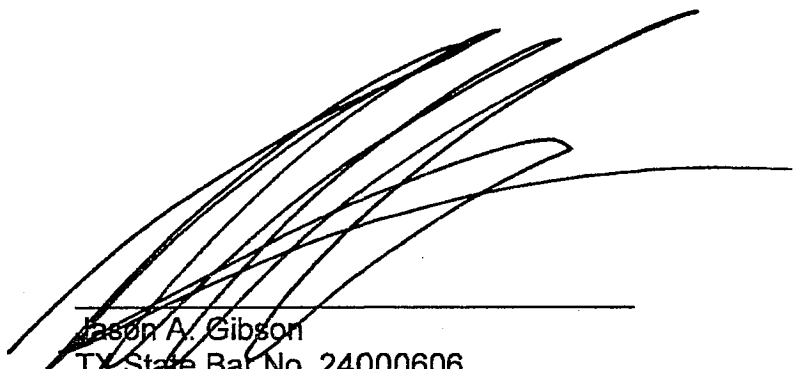
20. Plaintiff assert his rights under the Seventh Amendment to the United States Constitution and demands, in accordance with Federal Rule of Civil Procedure 38, a trial by jury on all issues.

**XIII.
PRAYER**

21. For the above reasons, Plaintiff prays he have judgment against Defendant, with interest on the judgment at the legal rate, pre-judgment interest, costs of court and for such other relief, both in law and equity, to which Plaintiff may show himself justly entitled.

Respectfully Submitted,

THE GIBSON LAW FIRM

A large, stylized handwritten signature in black ink, appearing to read 'Jason A. Gibson', is written over a horizontal line.

Jason A. Gibson
TX State Bar No. 24000606
Clifford D. Peel II
TX State Bar No. 24068776
Andrew C. Smith
TX State Bar No. 24063859
The Lyric Centre
440 Louisiana, Suite 2050
Houston, Texas 77002
Ph: (713) 650-1010
Fax: (713) 650-1011

ATTORNEYS FOR PLAINTIFFS



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.
Witness my official hand and seal of office
this June 7, 2013

Certified Document Number: 55267408 Total Pages: 7

Chris Daniel, DISTRICT CLERK
HARRIS COUNTY, TEXAS

In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail support@hcdistrictclerk.com

CONFIRMED FILE DATE: 4/9/2013



THE GIBSON LAW FIRM

April 9, 2013

FILED

Chris Daniel
District Clerk

APR 09 2013

Time: _____

Harris County, Texas

By _____

Via ~~Hand~~ Delivery

Chris Daniel
Harris County District Clerk
201 Caroline Street
Houston, Texas 77002

2013-21089

55th

Re: *Jamie Miller v. Standard Fusee Corporation d/b/a Orion Safety Products*

Dear Mr. Daniel:

Please find the following enclosed for filing in the above mentioned matter:

- 1) An original and three (3) copies of Plaintiff's Original Petition;
- 2) One (1) Civil Process Request Form;
- 3) One (1) Civil Case Information Sheet; and
- 3) Our check in the amount of \$269.00 to cover filing fee, jury fee, and issuance of the citation fee.

Please return a file stamped copy to the awaiting messenger. Also, as indicated please call our office as soon as the citations are ready for pick-up.

Your prompt attention to this matter is greatly appreciated. Should you have any questions or require any additional information please contact me.

Sincerely,

Kristin Pieknik
Paralegal to Jason A. Gibson

/kp
Enclosures

FILED
CHRIS DANIEL
DISTRICT CLERK
HARRIS COUNTY, TEXAS

2013 APR -9 PM 4:58

CIVIL AFTER HOURS

Certified Document Number: 55267414 - Page 1 of 1



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.
Witness my official hand and seal of office
this June 7, 2013

Certified Document Number: 55267414 Total Pages: 1

Chris Daniel, DISTRICT CLERK
HARRIS COUNTY, TEXAS

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CIVIL CASE INFORMATION SHEET (REV. 2/13)

CAUSE NUMBER (FOR CLERK USE ONLY):

2013-21089

COURT (FOR CLERK USE ONLY):

55

STYLED JAMIE MILLER v. STANDARD FUSEE CORPORATION d/b/a ORION SAFETY PRODUCTS

(e.g., John Smith v. All American Insurance Co.; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.

1. Contact information for person completing case information sheet:		Names of parties in case:		Person or entity completing sheet is:	
Name:	Email:	Plaintiff(s)/Petitioner(s):		<input type="checkbox"/> Attorney for Plaintiff/Petitioner <input checked="" type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other:	
JASON A. GIBSON	JAG@JAG-LAWFIRM.COM	JAMIE MILLER			
Address:	Telephone:	Defendant(s)/Respondent(s):		Additional Parties in Child Support Case:	
440 LOUISIANA, SUITE 2050	713-650-1010	STANDARD FUSEE CORPORATION		Custodial Parent:	
City/State/Zip:	Fax:	d/b/a ORION SAFETY PRODUCTS		Non-Custodial Parent:	
HOUSTON, TX 77002	713-650-1011			Presumed Father:	
Signature:	State Bar No:				
	24000606				
(Attach additional page as necessary to list all parties)					
2. Indicate case type, or identify the most important issue in the case (select only 1):					
Civil			Family Law		
Contract	Injury or Damage:	Real Property	Marriage Relationship:	Post-Judgment Actions (non-Title IV-D)	
<input type="checkbox"/> Debt/Contract <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract: <input type="checkbox"/> Foreclosure <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract:	<input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation <input type="checkbox"/> Malpractice <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises <input type="checkbox"/> Product Liability: <input type="checkbox"/> Asbestos/Silica <input checked="" type="checkbox"/> Other Product Liability List Product: FLARE GUN <input type="checkbox"/> Other Injury or Damage:	<input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property:	<input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void Divorce <input type="checkbox"/> With Children <input type="checkbox"/> No Children	<input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other <input type="checkbox"/> Title IV-D <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocity (UIFSA) <input type="checkbox"/> Support Order	
Employment	Other Civil:	Related to Criminal Matters	Other Family Law	Parent-Child Relationship	
<input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment:	<input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property	<input type="checkbox"/> Exemption <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other:	<input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other:	<input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Parentage/Paternity <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child:	
Tax	Probate & Mental Health				
<input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax	Probate/Wills/Intestate Administration <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings		<input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other:		
3. Indicate procedure or remedy, if applicable (may select more than 1):					
<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action		<input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment		<input type="checkbox"/> Judgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receivership <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction	
4. Indicate damages sought (do not select if it is a family law case):					
<input type="checkbox"/> Less than \$100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees <input type="checkbox"/> Less than \$100,000 and non-monetary relief <input type="checkbox"/> Over \$100,000 but not more than \$200,000 <input type="checkbox"/> Over \$200,000 but not more than \$1,000,000 <input checked="" type="checkbox"/> Over \$1,000,000					

CONFIRMED FILE DATE: 4/9/2013

Certified Document Number: 55267412 - Page 1 of 1

FILED

Chris Daniel
District Clerk

APR 09 2013

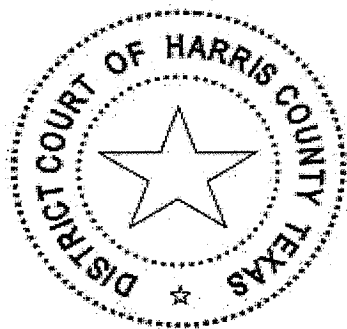
Harris County, Texas

By

Dapay

2013 APR 9 10:58

CIVIL AFTER HOURS



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office this June 7, 2013

Certified Document Number: 55267412 Total Pages: 1

Chris Daniel, DISTRICT CLERK
HARRIS COUNTY, TEXAS

In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail support@hcdistrictclerk.com